

1 ABRAMS, FENSTERMAN, FENSTERMAN,  
2 EISMAN, FORMATO, FERRARA,  
3 WOLF & CARONE, LLP

4 Seth L. Berman, Esq. (*admitted pro hac vice*)

5 sberman@abramslaw.com

6 3 Dakota Drive, Suite 300

7 Lake Success, NY 11042

8 Telephone: 516.328.2300

9 Facsimile: 516.328.6638

10 **HEFNER STARK & MAROIS, LLP**

11 Thomas P. Griffin Jr., Esq. (SBN 155133)

12 tgriffin@hsmlaw.com

13 2150 River Plaza Drive, Suite 450

14 Sacramento, CA 95833

15 Telephone: 916.925.6620

16 Facsimile: 916.925.1127

17 Attorneys for Plaintiff YELLOWCAKE, INC., and Counterdefendants COLONIZE  
18 MEDIA, INC., and JOSE DAVID HERNANDEZ

19 **UNITED STATES DISTRICT COURT**  
20 **EASTERN DISTRICT OF CALIFORNIA**

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19 YELLOWCAKE, INC., a California  
20 corporation,

21 ) Plaintiff,  
22 )  
23 ) v.  
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HYPHY MUSIC, INC.,

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28 )  
Defendant.

1 ) Case No.:  
2 ) 1:20-cv-00988-DAD-BAM

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DEclaration of JESUS  
CHAVEZ, SR. IN SUPPORT OF  
PLAINTIFF AND  
COUNTERDEFENDANTS'  
MOTION TO DISMISS  
DEFENDANT'S  
COUNTERCLAIMS AND  
SUPPLEMENTAL BRIEF  
Judge: Hon. Dale A. Drozd  
Date: August 10, 2021  
Time: 9:30 A.M.  
Courtroom: Courtroom 5, 7th floor

1 HYPHY MUSIC, INC., )  
2 )  
3 Counterclaimant, )  
4 )  
5 v. )  
6 )  
7 YELLOWCAKE, INC., COLONIZE )  
MEDIA, INC., JOSE DAVID )  
8 HERNANDEZ, JESUS CHAVEZ, SR., )  
9 )  
10 Counterdefendants. )  
11 )  
12 )

11 JESUS CHAVEZ, SR., declares under penalty of perjury the following to be  
12 true and correct pursuant to 28 U.S.C. § 1746:

13 1. I make this declaration in further support of the  
14 Plaintiff/Counterdefendants' motion to dismiss and supplemental briefing concerning  
15 Defendant/Counterclaim Plaintiff, Hyphy Music, Inc.'s, ("Hyphy") counterclaims.

16 2. I make this declaration based on my firsthand knowledge of the facts and  
17 circumstances of this matter. Further, I have reviewed all of the pleadings filed in this  
18 matter as well as the supplemental briefing documents submitted by Defendant Hyphy.

19 3. I am the founder and principal of the band Los Originales de San Juan  
20 (the "Band").

21 4. I founded the Band in approximately 1987.

22 5. Since its founding, the band has recorded approximately 39 albums and  
23 over 900 songs.

24 6. On or about September 16, 2013, I entered into an oral distribution  
25 agreement with Hyphy whereby Hyphy agreed to distribute three albums to be  
26 recorded by the Band.

27 7. Between September 2013 and sometime in 2015, the Band recorded the  
28 six albums including: (i) Los Originales de San Juan- El Campesino (ii) Los Originales

1 de San Juan- Corridos de Poca M... (iii) Los Originales de San Juan- En Vivo Desde  
 2 La Cantina de Mi Barrio; (iv) Los Originales de San Juan- Nuestra Historia En Vivo;  
 3 (v) Los Originales de San Juan- Amigos y Contrarios and (vi) Los Originales de San  
 4 Juan- Naci Con Suerte de Rey Con Mariachi (the “Albums”) which were subsequently  
 5 distributed by Hyphy.

6 8. I was the primary producer and the sole author of the sound recordings of  
 7 the Albums. At no time during the recording of the Albums did any shareholder  
 8 principal, employee, or anybody else affiliated with Hyphy provide any creative input  
 9 into the recording of the Albums or provide any original material with regards to the  
 10 sound recordings of the Albums.

11 9. Hyphy’s allegations in their counterclaim, amended counterclaim and  
 12 supplemental briefing regarding the alleged artistic control they exerted over the  
 13 albums is false. At no point did Hyphy select the musical compositions to be recorded  
 14 on the Albums, commission and/or provide the sound engineers and audio-visual  
 15 directors for the albums, produce the musical performances to be embodied on the  
 16 albums, nor direct the recording and filming of musical and audiovisual performances  
 17 to be embodied on the Albums. No employee of Hyphy contributed any creative input  
 18 that could deem Hyphy a coauthor of any of the Albums.

19 10. Also, Contrary to the Declaration of Jose Martinez, neither Javier  
 20 Elizando nor Marcelino Mendoza provided any services to me in connection with the  
 21 recording or performance of the Albums and made no creative contributions that can  
 22 be considered some sort of co-authorship. They were not members of my Band and  
 23 were not involved with the recording of the Albums.

24 11. The only other person involved with the recording of the Albums other  
 25 than the Band was an independent audio recording engineer named Omar Rosales who  
 26 the Band engaged to record the Albums. Omar Rosales was not engaged,  
 27 commissioned, nor hired by Hyphy.

28

1       12. I have never been employed by Hyphy, nor did Hyphy have control over  
2 the recording and production of the Albums. I never received any compensation from  
3 Hyphy other than as a royalty from net sales of the Albums.

4       13. The Albums were never produced as a “work-for-hire” for Hyphy nor was  
5 it ever understood or agreed that Hyphy would be deemed or agreed to be a co-author  
6 of the Albums.

7       14. Prior to 2019, I never agreed to transfer, sell or otherwise alienate any of  
8 my ownership interest in the sound recordings of the Albums to Hyphy or anyone else  
9 or deem anyone else a coauthor.

10       15. In or about 2019, I sold the entirety of all rights, title and interest in the  
11 copyrights of the sound recordings of the Albums to Plaintiff Yellowcake, Inc.  
12 (“Yellowcake”) pursuant to a written agreement. Yellowcake is the sole and exclusive  
13 owner of the copyrights in the sound recordings of the Albums and has been since  
14 2019.

15       16. Furthermore, I would like to advise the Court that Hyphy’s claims  
16 regarding the master copies of the Albums have no merit whatsoever. The Albums  
17 were recorded via digital medium and there are no particular physical master  
18 recordings of the Albums. When I sold the rights to the sound recordings of the  
19 Albums to Yellowcake, I provided Yellowcake with digital copies of the final  
20 recordings of the Albums. I never delivered any original, unreproducible, physical  
21 master recordings of the Albums to either Yellowcake or Counterclaim Defendant Jose  
22 David Hernandez (“Mr. Hernandez”).

23       17. Digital copies of the Albums are completely fungible and an infinite  
24 number of copies of the Albums can be reproduced in the same quality that is equal to  
25 the final copy produced at the original recording sessions and delivered to Hyphy for  
26 distribution.

27       18. To the best of my knowledge, Hyphy continues to possess digital copies  
28 of the master recordings of the Albums as they were recorded at the initial recording

1 sessions and could easily make copies of the Albums without any issue if it owned the  
2 rights to the sound recordings, although it does not. As such, Hyphy's allegations that  
3 Mr. Hernandez somehow converted the original master recordings of the Albums or  
4 interfered with Hyphy's ability to exploit the master recordings of the Albums, are  
5 blatantly false.

6 19. Lastly, Jose Martinez, the person who submitted a declaration in support  
7 of Hyphy's supplemental briefing, was never involved in the recording of the Albums  
8 and therefore has no firsthand knowledge regarding the true authorship of the Albums.  
9 He was never present in the recording studio and had absolutely no involvement in the  
10 recording of the Albums. Nor have I ever made any agreements with Mr. Martinez  
11 regarding ownership of the Albums.

12 20. I believe that the defendants in this action only filed copyright  
13 registrations in the sound recordings of the Albums, seven years after first publication  
14 and after they were sued by Yellowcake for copyright infringement, to countersue  
15 Yellowcake as part of a litigation strategy devised by their counsel to try and offset  
16 Defendants strict liability to Yellowcake.

17 21. I respectfully request that the Court determine that the copyright  
18 registrations filed by Hyphy in connection with the sound recordings of the Albums be  
19 canceled and that the Court grant Plaintiff/Counterdefendants' motion to dismiss the  
20 counterclaims in their entirety and grant Plaintiff/Counterdefendants judgment on their  
21 claims against the Defendants.

22 I declare under penalty of perjury under the laws of the United States that the  
23 foregoing is true and correct.

24  
25 Dated: August 9, 2021  
26  
27  
28

  
JESUS CHAVEZ, SR.